

Appl No. 10/057,182
Amdt. Dated May 19, 2004
Reply to Office Action of November 19, 2003
Attorney Docket No. 8854
Customer No. 27752

Remarks

Claims 1-26 are pending in the present application. Claims 27-28 have been added, and the appropriate claims fee is included. Support for the new claims can be found at least on page 9, line 28 and pages 14-15, example 4 and table 4 of the specification. Claims 24-26 have been withdrawn from consideration. Applicants will cancel non-elected claims upon indication of allowance.

Response to the Office Action

The Rejection under 35 U.S.C. 103(a) over Goldberg in further view of Berndt and Putman

Claims 1-23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Goldberg et al., (US 5,176,903 – hereinafter, “Goldberg”) in further view of Berndt (US 5,626,856 - hereinafter “Berndt”) and Putman et al., (US 5,902,571 – hereinafter “Putman”). Applicants respectfully traverse this rejection, as the Goldberg, Berndt, and Putman references do not establish a *prima facie* case of obviousness. Specifically, they do not teach or suggest all of Applicants’ claim limitations, as required under MPEP 2143.03. Goldberg, Berndt, and Putman do not teach or suggest an antiperspirant composition comprising from about 0.1% to about 30% by weight of an antiperspirant active; from about 0.05% to about 0.95% by weight of petrolatum; from about 10% to about 99% by weight of a liquid carrier; and from about 0.1% to about 30% by weight of a suspending agent. Therefore, a *prima facie* case of obviousness has not been established.

Goldberg teaches an antiperspirant composition containing a cosmetically effective amount of microcapsules which encapsulate a composition comprising fragrance oil and a diester. Goldberg also utilizes a wax base and other “nonessential constituents” such as suspending agents. Petrolatum is included in a laundry list of other waxes that may be used as “subordinate waxes” in combination with other waxes. Further, the wax base in Goldberg is present in an amount of 12-30% of the composition. The possibility that Goldberg can make the compositions of the present invention is not a teaching. The possible formulations that can be devised by selecting items from Goldberg’s ingredient lists number in the hundreds. An antiperspirant composition comprising from about 0.1% to about 30% by weight of an antiperspirant active; from about 0.05% to about 0.95% by weight of petrolatum; from about 10% to about 99% by weight of a liquid carrier; and from about 0.1% to about 30% by weight of a suspending agent is only one of these hundreds of possible formulations. There is no embodiment of this combination.

The Office Action cites *In re Woodruff* for the proposition that where the claimed ranges overlap or lie inside ranges disclosed by the prior art, a *prima facie* case of obviousness exists. *In re Woodruff*, 919 F.2d 1575, 15 USPQ2d 1934 (Fed. Cir. 1990). The prior art used for

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invalidating ranges in *In re Woodruff* taught the exact same molecule, not a combination of molecules to reach that claimed range. In *In re Woodruff* the court correctly considered the claimed ranges of one component, carbon monoxide, as it was claimed vis-à-vis the prior art. In the present case, the prior art cited (Goldberg) does not teach petrolatum in the range claimed. Therefore, the reliance on the *In re Woodruff* is misplaced.

The present invention requires petrolatum in an amount of from about 0.05% to about 0.95%. Hydrogenated castor oil may be included in the present invention as a suspending agent. However, irrespective of the presence or amount of hydrogenated castor oil present, Claim 1 of the present invention limits the amount of petrolatum to an amount of from about 0.05% to about 0.95%. The Office Action attempts to redefine "wax" in Goldberg to include both petrolatum and the suspending agent. The potential combination of petrolatum and hydrogenated castor oil does not render the invention obvious in view of Goldberg's broad disclosure of 12-30% of a wax.

Moreover, the claimed range of petrolatum in an amount of from about 0.05% to about 0.95% is essential in the present composition in order to provide the consumer benefit of antiperspirant efficacy and wash-off benefits. Petrolatum is generally known for inhibiting antiperspirant efficacy and wash-off benefits. Thus, higher amounts of petrolatum may adversely affect the consumer benefits of the product of the present invention. On the other hand, selectively low concentrations of petrolatum in the antiperspirant compositions of the present invention allow for both antiperspirant efficacy and wash-off benefits.

Furthermore, the combination of Goldberg, Berndt, and Putman also does not teach or suggest all of the Applicants' claim limitations. The three references do not teach or suggest an antiperspirant composition comprising the aforementioned components in the requisite amounts. Therefore, Applicants contend that the claimed invention is unobvious and that the rejection should be withdrawn.

Conclusion

Applicants have made an earnest effort to distinguish the present invention from the applied references. WHEREFORE, Applicants respectfully request reconsideration of this application and allowance of Claims 1-2³.

Respectfully submitted,
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